



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

SEPTEMBER 10, 2012

ARDEN ARRINGTON  
PO BOX 1110  
SALMON, ID 83467

Re: Your Correspondence Dated September 2, 2012

Dear Mr. Arrington:

Your letter dated September 2, 2012 was sent to the Director and copied to me via facsimile on the same date. We received your hard copy and the photo CD on September 6, 2012. The Director asked that I respond to your letter.

Your letter is devoted almost entirely to the issue of water wasting on the Savage Ranch Water Users Ditch (aka. Sanderson Ditch). However, you did reference the August 28, 2012 field visit and inspection of Wallace Creek diversions by Nick Miller of IDWR. You have probably received correspondence from me regarding Mr. Miller's visit, his findings, and the Department's recommended actions. As you may now know, IDWR's site visit revealed certain uses of water from the lower end of the creek that either did not have a water right or were not in conformance with water rights. As you may further know, IDWR recommended maintaining the diversions as measured by Mr. Miller on August 28 due to the following reasons:

- The Wallace Creek water users failed to meet in 2012 to elect a watermaster. IDWR will not attempt to find and appoint a watermaster at this late juncture of the irrigation season;
- Nearly all of the diversions do not have adequate measuring devices and head gates so there are no tools in place that would enable an appointed watermaster to execute his or her duties (note; the Sanderson ditch was the only ditch with a lockable controlling gate and a measuring device);
- Finding of unauthorized water use and water uses not in conformance with water rights on the lower end of the creek (separate notices have been sent to the appropriate water users).

IDWR is not inclined to expend additional department resources investigating or taking action against the alleged waste of water this season given the reasons cited above as well as the conclusions and recommendations from Mr. Miller's visit and my September 7<sup>th</sup> correspondence. A watermaster appointed next year, who has adequate head gates and measuring devices at his disposal, may have the ability to monitor water use and demand from the creek and be in a better position to address the concerns of water users. Any future investigation of water wasting should apply to all ditches in the water district as it is likely that all of the ditches experience some degree of waste.

Arden Arrington  
9/10/2012, p. 2

The law cited in your letter, including Section 18-4302 and the language quoted in item number 4 on page two of your letter are found in Idaho Code Title 18, *Crimes and Punishments*, Chapter 43, *Irrigation Works*. The offenses described in the individual sections of Chapter 43 are misdemeanors that are addressed by local law enforcement. Although IDWR may assist with questions relative to such alleged misdemeanors, actual enforcement of the law in these instances is handled by the County Sheriff's Office or other appropriate local law enforcement agencies. IDWR does not have authority under Section 18-4302 to issue a Notice of Violation or file an action seeking injunctive relief.

Please contact me directly at 208-287-4959 if you have further questions regarding this matter.

Sincerely,



Tim Luke  
Chief, Water Compliance Bureau

C: Gary Spackman, Director, IDWR  
IDWR Eastern Region  
Lynn Bowerman, Lemhi County Sheriff  
Stephen Goodson, Idaho Governor's Office  
Mike Edmonson, Office of Species Conservation

ARDEN ARRINGTON  
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DEPARTMENT OF  
WATER RESOURCES

September 2, 2012

18-4302. Wasting water used for irrigation. Any person or persons, who shall willfully or wantonly waste any of the waters of any stream, the waters of which are used for irrigation, to the detriment of any claimant of such water for irrigation purposes, by diverting the same for an unnecessary use or purpose, or by allowing such water to waste by running into depressions or dry channels so that the same cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted, are guilty of a misdemeanor.

Mr. Gary Spackman, Interim Director  
Idaho Department of Water Resources  
322 E. Front St  
PO Box 83720  
Boise, Idaho 83720-0098

Dear Director Spackman:

I am a senior water right holder (1898, 1902) with 3 properties in the Lower Wallace Creek water use area. On August 28, 2012, Mr. Nick Miller of your agency made a field inspection of the Wallace Creek Upper and Lower water use areas. This inspection was done at the insistence of Wallace Creek senior water right holder (Lower) David Rhoades, and at the urging of Lemhi County Sheriff Lynn Bowerman and Chief Deputy Steve Penner. During one of Mr. Rhoades' two recent conversations with your staff, Mr. Rhoades explained the ongoing, yearly circumstances—water being wasted by Upper area residents, which prematurely causes the Lower, senior right holders' conveyance to diminish to levels below our guaranteed quantities. Mr. Rhoades asked your staff, "*Is wasting of water illegal, or is it **not** illegal?*" Mr. Rhoades' question was answered definitively, and in the affirmative. Mr. Rhoades also informed your staff on both occasions that *our* senior right conveyance, Wallace Creek, was *at that time* being drawn down by a junior right holder, Dale Gooby, and that this had been occurring off and on for the past month, as it has every summer since at least 2006, when I arrived. Mr. Rhoades was told that if such was indeed the case, we had every right to assert our standing as senior right holders, and to increase the amount of water flowing into our diversion (Wallace Creek proper) as required.

The entire Sanderson Ditch water conveyance is wasteful *by its "design"*. Hence, the water use practices of the Upper use area residents -- Savage Ranch Water Users Assn. ("SRWUA") -- are responsible for the yearly, seasonal draw down of available water experienced by both use areas. I am providing photographs of the areas inspected by Mr. Miller showing evidence of a decade-long flow of wasted water caused by Gooby, who is a P.E. in the employ of USDA NRCS, and as such, knows precisely the implications and impacts of the *non-engineered* conveyance "*system*" he has put in place. The bypass flow around his water pickup point has wasted an inestimable amount of Wallace Creek water in the years since he installed it—circa 2002-2003—several years prior to his having received USFS approval. This illegally diverted, unused, and willfully wasted water feeds cattails in the downstream ravines. I use the term *illegal* as the water is being *knowingly discarded as a cost of the conveyance* of the small percentage of water *actually put to beneficial use* for which the extraction of *all of the SRWUA water* from Wallace Creek is permitted. It is my understanding that Mr. Miller was able to hear the water as it flowed, unused and wasted, down the ravine.

Add to that the waste of water as it travels over a mile through a 100 year old ditch riddled with machine-enlargement-caused penetrations of the ditch's rock substrate— Bill Maxwell Jr., IDWR's chief witness in the Upper W.C. adjudication trial, agreed that an accurate *estimate* of the amount of water extracted from Wallace Creek that never reaches the SRWUA use area as in the range of 75 to 80 percent. The most glaring abuse of 18-4302, however, occurs at the very end of the Sanderson ditch— as it was illegally extended by SRWUA (unauthorized extensions & enlargements are expressly disallowed in the Use and Maintenance Agreement issued with the Colorado Ditch Bill easement conveyance, an act of Congress. See also the photo of the ditch blowout caused by too much water being carried in the ditch). All of the *remaining water has been directed to flow unused, out onto a hillside* owned by Chuck Maulem, an absentee landowner. This disgraceful scenario portrays precisely the set of conditions that 18-4302 was designed to outlaw.

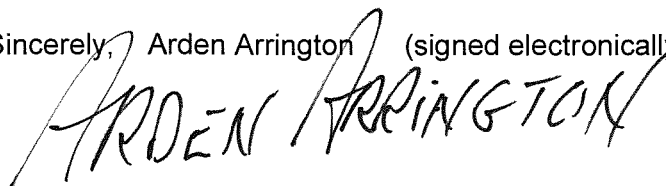
- 1) *We ask you as Director* to intervene on behalf of the Wallace Creek senior water right holders, and to secure our 1898 & 1902 rights to Wallace Creek water as provided by Idaho law.
- 2) *We ask you as Director* to investigate this complaint and to issue a written notice of violation to Gooby for the illegal diversion or dumping of water as provided in 18-4302.
- 3) *We ask you as Director* to investigate this complaint and to file an action seeking injunctive relief requiring Gooby and SRWUA to immediately cease and desist, as provided in Idaho law.
- 4) Idaho law provides that "*Any person violating any provision of this chapter... shall be guilty of a misdemeanor and any continuing violation shall constitute a separate offense for each day during which such violation occurs.*" *We ask you as Director* to investigate this complaint, and if your investigation determines such action is warranted, to refer this matter to the Idaho A. G.

I am providing photographs of the areas viewed by Mr. Miller that may be helpful in your deliberations. Mr. Miller may not recognize the photo of the end of the Sanderson ditch as it disappears out onto the hillside on the Maulem property. My archive of photographs, which begins in Spring 2006, is available for your use. You should interview SRWUA "members" about their 2011 and 2012 status regarding the amounts of Wallace Creek water removed from the creek that they have *actually put to beneficial use*. Doing so will help you to understand that almost no irrigation by users other than Gooby has occurred over the past year (2 users with yards only, Bourdon and Olsen, not pastures, and *no other irrigators*). What you are being told about who is using water on the Upper use area is *inaccurate*. For example, today, when the attached photos of the diversion were taken, there was no irrigation ongoing in the Upper water use area. This is likely a result of the continuing civil litigation against members of SRWUA alleging over-watering of the unstable bentonite hillsides, one of which slid and partially covered the riverfront property below. Geologist Thelma Moye Cullinae of Challis has pronounced the Sanderson ditch unsafe. SRWUA members were led down the path to litigation by Gooby, the architect of this ill-conceived conveyance that by design violates Idaho water law. They were all sued. Can you blame them for not watering?

Mr. Rhoades reported to your staff—and I am reporting to you again now—that day after day, week after week, and month after month, the Gooby diversion has run through the 2012 irrigating season with *no one*—or with *only one* user—irrigating. The Sanderson ditch functions as a de facto private water conveyance, usurping the rights of others to water removed from Wallace Creek that will **never** be put to beneficial use. Why is Gooby allowed to extract water from Wallace Creek that he has no intention of putting to beneficial use? For your information, before, during and after your investigation this week, the ditch has run and **still runs** as shown in the attached photos. No one in the Upper area is watering any pastures. With Mr. Miller having seen the amount of dry ground and pastures on all of the Upper use area properties except Gooby's, the implication as to who is responsible for the continued and needless, illegal diversion and dewatering of Wallace Creek is obvious.

Mr. Spackman, as you view the photo documentation I am providing, water is still being wasted. Your tag is on the diversion. Why don't you just go up and lock it off?

Sincerely, Arden Arrington (signed electronically on September 2, 2012)



CC: David Rhoades

Copy via email to: Lemhi County Sheriff Lynn Bowerman, Chief Deputy Steve Penner  
NOAA NMFS Special Agent Eric Morgan  
USDA USFS Special Agent Gretchen Lampe  
USDA OIG Special Agent Kevin Porter  
Governor Butch Otter  
Mike Edmondson, Governor's Office of Species Conservation  
Rocky Barker, *Idaho Statesman*  
Zach Kyle, *Idaho Falls Post Register*

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Photos provided to Gary Spackman, Director, IDWR  
with 9/2/2012 Complaint on Wallace Creek waste of water by  
Dale Gooby and Savage Ranch Water Users Assn.

- 1) Dated 8/5/2012 showing drawn down/dry senior water right (1898-1902) conveyance owned by Lower Wallace Creek water use area.
- 2) Dated 9/2/2012 showing Gooby diversion (1923 junior water right, flows toward bottom) at Wallace Creek and blocked balance of creek at left (to 1898 senior water right use area).
- 3) Dated 9/2/2012 showing Cipoletti weir at Gooby diversion
- 4) Dated 8/6/2011 showing Gooby diversion to pipe-drop into ravine, Sanderson ditch.
- 5) Dated 8/20/2009 showing closeup of Gooby diversion box.
- 6) Dated 8/20/2009 showing closeup of pipe drop into 55 gallon drum.
- 7) Dated 8/20/2009 showing closeup of down-ravine pickup point where wasted water flows around pickup whenever water has been stopped from flowing into pipe, then drains to ravines below.
- 8) Dated 9/11/2011 showing water in ravine.
- 9) Dated 7/5/2010 showing water in ravine.
- 10) Dated 9/11/2011 showing water in ravine.
- 11) Dated 8/20/2009 showing water in ravine.
- 12) Dated 8/16/2011 showing water in ravine.
- 13) Dated 8/16/2011 showing water in ravine.
- 14) Dated 9/11/2011 showing water in ravine.
- 15) Dated 4/24/2010 showing slide area at road contiguous with Gooby property caused by water sub-ing through ground due to upslope over-watering by Olsen
- 16) Dated 7/9/2012 showing water in ravine
- 17) Dated 7/9/2012 showing water in ravine
- 18) Dated 8/6/2011 showing illegal extension of Sanderson Ditch and headgate leading to Bourdon, most northerly user on conveyance. Ditch continues to flow north where water is dumped on Maulem property. Maulem is an absentee landowner and has never irrigated.
- 19) Dated 7/5/2010, same.
- 20) Dated 8/6/2011, same.
- 21) Dated 7/5/2010, same.
- 22) Dated 5/27/2010 showing Sanderson ditch blowout caused by SRWUA, looking down toward Maxwell property. Blowout was caused by too much water being carried in an unstable, 100 year old ditch. Blowout was reported and water flow shut off by Bill Maxwell.
- 23) Dated 5/27/2010 showing water remaining in ditch, adjacent to slide area.
- 24) Dated 5/28/2010 showing blowout damage as viewed from beneath. This damage has never been repaired.